

59TH MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION

Tuesday, September 14, 2004

Minutes

Chairman Wilson called the meeting to order at 1:00 p.m.

Commissioners present: Chase, Crofoot, Ginsburg, Lucht, Malouf, Moffit, Nicolay, Row, Salamon, and Toulson

Chairman Wilson announced that Joel Tornari, Assistant Attorney General, counsel to MHCC and both of its predecessors, had left MHCC to become counsel to the Medicaid program. Chairman Wilson welcomed Lekisha Daniel, Health Policy Analyst, to the Facility Quality and Performance Division.

ITEM 1.

Approval of Minutes

Commissioner Ernest Crofoot made a motion to approve the Minutes of the July meeting of the Commission, which was seconded by Commissioner Constance Row, and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

In addition to the written *Update*, Ben Steffen, Deputy Director of Data Systems and Analysis, noted that e-Scripting companies are now operating in Maryland. Staff is reviewing the standards and regulations regarding the inclusion of e-Scripting companies as Electronic Health Networks. Both the Electronic Health Network Accreditation Commission (EHNAC) and Maryland standards have been found to be inappropriate for certification of e-Scripting companies. Staff has begun a process with EHNAC and the two large e-Scripting companies to investigate whether or not national standards can be developed.

Enrique Martinez-Vidal, Deputy Director of Performance and Benefits, announced that members of staff have been working with staff from the Governor's office and from the Department of Health and Mental Hygiene (DHMH) in the development of a legislative proposal that would: (1) allow reasonable penalties to be applied to those entities that have failed to obtain a Certificate of Need (CON) or a required exemption when they were obligated under statute to do so and have proceeded with the project without Commission authorization; (2) extend MHCC's authority to impose reasonable penalties on entities that have received a

CON but have not fulfilled required performance standards (e.g., a facility that was supposed to be constructed and operational by a certain date and has not opened, thus denying timely access to services to those in need); (3) specify in law that monetary penalties imposed by the Commission may not exceed \$1000 per violation for each day a violation continues, and specify the factors used to determine the amount of any fine; (4) strike the specific reference to the current statutory authority to fine at \$100 per day those entities that do not give MHCC required information to support the development of the State Health Plan for Facilities and Services; and (4) increase, for hospitals only, the capital expenditure threshold that requires a CON from \$1.25 million (an amount that is required to be adjusted for inflation and which is currently at approximately \$1.6 million) to \$2.5 million (adjusted for inflation annually) with an effective date of July 1, 2005. Following discussion among the Commissioners, the consensus was that staff would seek to have the proposed departmental bill submitted to both the Senate and the House of Delegates.

Pamela Barclay, Deputy Director of Health Resources, referred the Commissioners to pages sixteen through twenty-one of the *Update*. Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

PROPOSED ACTION: COMAR 31.11.06 - Comprehensive Standard Health Benefit Plan

Chairman Wilson said that at the July meeting of the Commission, staff presented the actuarial projections for the average composite premium in the Comprehensive Standard Health Benefit Plan (CSHBP) that was prepared by Mercer Human Resource Consulting, Inc. Those projections indicated that the plan will be under the affordability cap through 2005. He said that the Commission must consider final approval of the annual report on proposed changes to the benefit plan and appropriate regulatory modifications. Mr. Martinez-Vidal presented a summary of the annual review of the CSHBP. He said that staff recommends no changes to the benefit design. Proposed changes to the regulations were technical in nature in order to correct outdated cross-references within the regulations. Commissioner Crofoot made a motion that the Commission accept the staff recommendation, which was seconded by Vice Chairman George Malouf. Commissioner Stephen J. Salamon asked whether the report is submitted to the legislature. Staff responded that the document is not submitted to the legislature per se but is used to assist the Commission in making decisions about the CSHBP and is utilized as a staff resource when briefing the legislative committees about the Commission's work related to the small group market. It serves as a historical document as well. The report is available to the public through the Commission's website and upon request.

Commissioner Salamon expressed some concern about language included in the report that seemed to indicate that when making decisions about coverage options only two issues should be taken into account: increased choice of coverage options to enhance price competition and risk segmentation. He stated that there are a number of other issues that should be considered as well. Barbara McLean, Executive Director, stated that the legislature, in the past, has asked what the Commission has used as its guiding principals in making decisions about coverage options and this language reflects the historical balance of concerns that the Commission has considered. Commissioner Moffit also raised concerns, not about the report itself or the recommendations, but that Maryland's small group market is highly concentrated. Following additional discussion, the report was approved as presented with the agreement that the issues raised would be reflected in the minutes.

Mr. Martinez-Vidal next presented information about Maryland's small group market as compared to surrounding states and the United States. This information had been requested at a previous Commission meeting. The presentation included information about the how Maryland compares in: premium as a percent of income for single and family coverage; small group market offer rates by number of firms and by number of employees; change in the uninsured rate; health care coverage rates; increases in health insurance

premium; and the market share of the three largest insurers. There was a discussion following the presentation but no action was necessary.

FINAL ACTION: COMAR 31.11.06 – Comprehensive Standard Health Benefit Plan is hereby APPROVED.

ITEM 4.

PROPOSED ACTION: COMAR 10.24.02 – Data Reporting by Hospitals

Chairman Wilson said that Jane Pilliod, Assistant Attorney General, would present regulations related to Data Reporting by Hospitals for approval. Ms. Pilliod said that with this action the Commission would amend Regulations .01-.04 under COMAR 10.24.02 – Data Reporting by Hospitals. The purpose of this action is to assure that data needed by the Commission are collected and reported uniformly by hospitals. The proposed amendments include provisions that will allow the Commission, for example, to implement the recommendations of expert advisory committees concerning data required to support health planning. The proposed action also corrects dated references to the Commission's statutory authority and makes several other technical corrections. Commissioner Moffit made a motion that the Commission approve the regulations, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: COMAR 10.24.02 – Data Reporting by Hospitals is hereby APPROVED as Proposed Permanent Regulation.

ITEM 5.

CERTIFICATION OF ELECTRONIC HEALTH NETWORKS:

- **Eyefinity**

Chairman Wilson asked Dr. David Sharp, Chief of EDI Programs & Payer Information Systems, to present this agenda item. Dr. Sharp said that staff had completed its review of MHCC certification documentation from Eyefinity and recommended that the Commission certify it as an Electronic Health Network (EHN). Commissioner Robert Nicolay made a motion that the Commission accept the staff recommendation, which was seconded by Commissioner Constance Row, and unanimously approved.

ACTION: Eyefinity is hereby APPROVED as an ELECTRONIC HEALTH NETWORK.

- **Medifax**

Dr. Sharp said that staff had completed its review of MHCC certification documentation from Medifax and recommended that the Commission certify it as an Electronic Health Network (EHN). Commissioner Row made a motion that the Commission accept the staff recommendation, which was seconded by Commissioner Nicolay, and unanimously approved.

ACTION: Medifax is hereby APPROVED as an ELECTRONIC HEALTH NETWORK.

- **Mutual of Omaha's-Medicare Crossover Clearinghouse**

Dr. Sharp said that staff had completed its review of MHCC certification documentation from Mutual of Omaha's-Medicare Crossover Clearinghouse and recommended that the Commission certify it as an Electronic Health Network (EHN). Commissioner Row made a motion that the Commission accept the staff recommendation, which was seconded by Commissioner Nicolay, and unanimously approved.

ACTION: Mutual of Omaha's-Medicare Crossover Clearinghouse is hereby APPROVED as an ELECTRONIC HEALTH NETWORK.

ITEM 6.

CERTIFICATE OF NEED:

- **Exceptions Hearing** – Reviewer's Recommended Decision on the Certificate of Need Application of Shady Grove Adventist Hospital for a Five-Bed Hospital and Emergency Department, Docket No. 03-15-2114

Chairman Wilson said that Shady Grove Adventist Hospital, a member of Adventist HealthCare, had submitted an application for a Certificate of Need to establish a five-bed hospital and emergency department in a professional office building in Germantown, Maryland. Participating in the review, as interested parties opposing the application, were CareFirst BlueCross BlueShield, Montgomery General Hospital, and Suburban Hospital. Commissioner Rowe served as the Reviewer in this matter. On June 10, 2004, Commissioner Row issued her Recommended Decision in which she recommended that the Commission deny Shady Grove Adventist Hospital's (Shady Grove's) application. Shady Grove filed exceptions to the Recommended Decision and the interested parties filed responses. Chairman Wilson said that the Commission would conduct an Exceptions Hearing prior to acting on the Reviewer's Recommended Decision. (The exceptions hearing was originally scheduled for the Commission's July 15, 2004 meeting, but was postponed at the request of Shady Grove.)

The Commission heard oral argument from Howard Sollins on behalf of Shady Grove; Hal Cohen, on behalf of interested party CareFirst BlueCross BlueShield, and Jack Tranter, representing Interested Parties Montgomery General Hospital and Suburban Hospital. After oral argument, Commissioner Row recommended that Shady Grove's application be denied and made a motion that the Commission adopt her Proposed Decision, which was seconded by Commissioner Crofoot. Following discussion among the Commissioners, the Proposed Decision was adopted, with Commissioners Walter Chase, Larry Ginsburg, Robert Nicolay, Ernest Crofoot, Constance Row, Stephen Salamon, Jeffrey Lucht, and Clifton Toulson, Jr. voting in favor of adoption, and Commissioner Robert Moffit voting in opposition to adoption.

ACTION: The Reviewer's Recommended Decision on the Certificate of Need Application of Shady Grove Adventist Hospital for a Five-Bed Hospital and Emergency Department, Docket No. 03-15-2114 is hereby APPROVED.

- **ACTION:** Memorial Hospital at Easton – Establishment of a Twenty-Bed Rehabilitation Unit, Docket No. 03-20-2128

Chairman Wilson announced that the next agenda item would be a presentation by Susan Panek, Chief of Certificate of Need, of a CON application from Memorial Hospital at Easton for the establishment of a twenty-bed comprehensive integrated inpatient rehabilitation unit. Ms. Panek said that the Memorial Hospital at Easton, a 132-bed hospital in Talbot County on Maryland's Eastern Shore, sought Certificate of Need approval to establish a twenty bed comprehensive integrated inpatient rehabilitation (CIR) unit, which would be located in what is now the Memorial-Easton subacute care unit, on the hospital's fifth floor. The area intended for the proposed rehabilitation unit currently houses a skilled nursing unit with thirty-three comprehensive care facility beds. The Hospital estimated that the total cost to convert the thirty-three bed hospital-based skilled nursing facility to a twenty-bed rehabilitation unit would be \$4,287,520. Staff analyzed the proposed project's compliance with Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f) and applicable standards in COMAR 10.24.07 and COMAR 10.24.09 State Health Plan for Acute Inpatient Rehabilitation Services. Based on this analysis, staff recommended approval of the

CON application submitted by Memorial Hospital at Easton. Ms. Panek introduced Jeff Johnson, Walter Sajak, and Bill Roth from Memorial Hospital at Easton, and their counsel, Howard Sollins. Following discussion among the Commissioners, Vice Chairman Malouf made a motion that the Commission approve the hospital's application for Certificate of Need, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: Memorial Hospital at Easton – Establishment of a Twenty-Bed Rehabilitation Unit, Docket No. 03-20-2128, is hereby APPROVED.

- **ACTION: Plastic Surgery Center of Maryland – Addition of One Operating Room, Docket No. 04-03-2130**

Chairman Wilson introduced the next agenda item, also a CON action for the Commissioners' consideration. Christine Parent, Health Policy Analyst, presented this item. She said that the Plastic Surgery Center of Maryland, P.A. ("PSC" or "the Surgery Center"), is a licensed ambulatory surgery center with one operating room and one procedure room located at 1304 Bellona Avenue, Lutherville, Baltimore County. Its principal owners are Adam L. Basner, M.D. and Lawrence I. Rosenberg, M.D., who established the Plastic Surgery Center of Maryland in 2002 after receiving a determination of non-coverage by Certificate of Need ("CON") requirements. The Surgery Center sought to increase operating room capacity by converting an existing procedure room to a sterile operating room. The establishment of two operating rooms in a physician's office meets the statutory definition of a health care facility; therefore PSC was required to receive CON approval to establish the second operating room. The proposed conversion of the existing procedure room to a sterile operating room would require modifications to the Center's existing HVAC system and related work. Capital expenditures for the renovation of the procedure room would be \$62,950. The source of funds for the renovation would cash provided by PSC, and renovation would be completed within two months from the start of the renovation.

The applicant cited the increased time spent in the operating room doing complex and multiple plastic surgery procedures per case (i.e., per single patient encounter), the additional capacity needed to handle a projected increase in cases with the addition of a fourth physician into the practice, and the overall increase in demand for plastic surgery as justification for the need for a second operating room rather than a procedure room. Based on staff's review and analysis of the application, the expansion project proposed by The Plastic Surgery Center of Maryland met the standards in the State Health Plan for Ambulatory Surgical services at COMAR 10.24.11 and was consistent with the general Certificate of Need review criteria at COMAR 10.24.01.08G (3) (a) through (f). Ms. Parent said that staff recommended that the Commission approve the application of The Plastic Surgery Center of Maryland to convert the existing procedure room to a sterile operating room. She introduced Shawn Strobel, Assistant Office Manager of the Center, to the Commissioners. Following discussion, Vice Chairman Malouf made a motion to accept the Staff Recommendation, which was seconded by Commissioner Row, and unanimously approved.

ACTION: The Application for Certificate of Need of the Plastic Surgery Center of Maryland – Addition of One Operating Room, Docket No. 04-03-2130, is hereby APPROVED.

ITEM 7.

PRESENTATION: 2004 Ambulatory Surgery Provider Directory

Ms. Parent also presented the next agenda item. She said that on an annual basis, the Commission prepares the *Maryland Ambulatory Surgery Provider Directory*, and that the 2004 Directory was now available. The Directory includes a list of providers by jurisdiction, information on specialties, and a list of freestanding facilities with hospital or health system affiliations. This consolidated source of information for

each individual freestanding and hospital-based ambulatory surgical facility in Maryland is used by the Commission, health care providers, policy makers, health insurers, and the members of the public. Chairman Wilson thanked Ms. Parent for her presentation.

ITEM 8.

PRESENTATION: *Report to the General Assembly on Status of the Maryland Trauma Physicians Fund*

Ben Steffen presented a summary of this report to the General Assembly which documents the Fund balance and disbursement process during its first year of operation. Following the presentation and discussion among the Commissioners on this matter, Chairman Wilson thanked Mr. Steffen for his presentation.

ITEM 9.

Chairman Wilson announced that he had resigned as Chairman of the Commission effective October 1, 2004 and that a new Chairman would be appointed by Governor Ehrlich.

Hearing and Meeting Schedule

Chairman Wilson announced that the next meeting of the Commission would be Tuesday, October 19, 2004 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at 1:00 p.m.

ITEM 10.

Adjournment

There being no further business, the meeting was adjourned at 3:38 p.m. upon motion of Vice Chairman Malouf, which was seconded by Commissioner Nicolay, and unanimously approved by the Commissioners.